

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/808,894 Confirmation No.: 7403
Applicant : Gregory Duane ELLIS
Filed : March 24, 2004
Title : REMOTELY ACCESSED VIRTUAL RECORDING ROOM
TC/Art Unit : 2622
Examiner: : Joel W. FOSSELMAN

Docket No. : 73591.000004
Customer No. : 21967

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to the Pre-Appeal Brief Conference Program, Applicant hereby requests a pre-appeal brief conference in the above-referenced application. The following responds to the Office Action of February 4, 2009 ("Office Action") regarding claims 1-12 and 60-105. A Notice of Appeal is attached.

Claims 1, 2, 4-9, 11, 12, 64, 65, 67-72, 74, 75, 80, 81, 83-87, 92, 93, 95-99, and 105 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Application No. 2002/0056123 to Liwerant *et al.* ("Liwerant"). Claims 3, 10, 60-63, 66, 73, 76-79, 82, 88-91, 94, and 100-104 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Liwerant in view of Official Notice. Applicant respectfully submits the Office Action's allegation that Liwerant anticipates the claims is unreasonable at least because Liwerant does not teach or suggest *streaming audio and video material from a recording device on a user front end to a host back end so that the material can be recorded on the host back end*. Because reversal of the pending rejections is likely, Applicant respectfully requests that the cost of appeal be avoided by withdrawing the above rejections.

I. Liwerant does not teach or suggest streaming audio and video material from a recording device on a user front end to a host back end.

Independent claims 1, 64, 80, 92, 104, and 105 each recite in various forms the “streaming of audio and video material from a recording device on the user front end to the host back end over the Internet” so that the material can be recorded on the host back end. Liwerant does not disclose such streaming. Instead, Liwerant merely discloses recording video with a personal computer, saving the entire video as a *file* in memory, and then uploading the video *file* to a hosting site. To explain, a user of the Liwerant system may record 60 seconds of video with a Webcam connected to the user’s computer, save the complete video as a file called “movie.avi” in a folder on the user’s hard drive, then upload the file to a hosting site for other users to see.

This is completely different from the claims, which recite streaming audio and video material from a recording device on the user front end to the host back end so that the material can be recorded on the host back end. As one example, and without limitation, video being shot with a Webcam can be streamed to a server that, when the user is finished taking the video, saves the video as a file in memory. The user thereby avoids having to store a potentially large video file on his or her hard drive. The user also avoids having to perform a separate upload operation after taking the video. Liwerant simply does not disclose such features.

Liwerant is directed to “methods and systems for sharing video segments over a network.” Liwerant ¶ 5. The disclosed method generally involves (1) receiving a video file from a user, (2) converting the file into a streaming file format, and (3) making the file available for other users to view in the streaming file format. Liwerant ¶¶ 7-9. Importantly, the entire disclosure of Liwerant is directed to the storage of a video “file” on the user’s hard drive, which is uploaded to a hosting site for other users to access. For example:

- ¶ 45: “Turning to FIG. 1A, a sender (‘sender A’) using a computer 10 sends a video segment *in file form* and any associated audio material (or a plurality of still images with their associated audio files) as, for example, an e-mail attachment to an e-mail message from sender A’s computer 10 over a network (such as the Internet or over any other communication medium that sender A’s computer 10 can employ) to a mail server B 21.”
- ¶ 55: “These capabilities include, but are not limited to, performing the functions of: receiving the transmission of a *video file*, optionally with one or more audio files, in e-mail, HTML message, Web page format, or FTP upload to the server computer . . .”
- ¶ 76: “This document makes reference to processing of a *video file* on the user computer before the *video file* is uploaded to a host computer.”

- ¶ 109: "Save and Share button 536, which in the present embodiment activates software modules that convert the current *video file* into a compressed streaming format, upload that converted *file* to the VideoShare web site, and give the user options to distribute that video to other people."
- ¶ 112: "When the user begins to record a video, the VideoShare Producer 20 software builds a new "Capture Graph" that renders the video stream to both the display window as well as to a temporary *AVI file* on the user's hard drive."
- ¶ 113: "The user can also choose to import a pre-existing video, which in one embodiment can be a *file format* selected from the AVI, MPEG, or QuickTime *file formats*, by activating the Import Video button 535."
- ¶ 135: "The video segment *file* in a format that is compatible with streaming video is then temporarily stored in the user's computer 16, for example as a *file* on the hard drive of computer 16."

The figures of Liwerant further demonstrate that video is not streamed from the user's computer, but rather saved and uploaded as a complete video file. Figure 1B shows that a video can be uploaded as either an e-mail "attachment" 1250 or a direct upload using an HTML form. In the latter case, the user selects "Browse for File" function 1340. Similarly, Figure 11 shows a "Working Directory" 1180 (*i.e.*, C:\Temp) and a "Queue Directory" 1190 (*i.e.* c:\Program Files\VideoShare Producer\Publish) where video files can be saved on the user's hard drive. *See also* Fig. 2 ("Produce/Record Video on the Hard Disk"). The Liwerant system also allows the user to "work offline" and record/import video files even when he or she does not have access to the Internet. Liwerant ¶ 167. In that case, streaming would clearly be impossible as there would be no way to communicate.

The Office Action cites a portion of paragraph 129 of Liwerant as allegedly disclosing the streaming feature, but ignores the preceding sentence which explicitly states that the uploaded video is a previously recorded, "temporarily stored SMF file." Paragraph 129 reads:

This portion of the automated process is denoted by the box 645 labeled "Transfer ("upload") temporarily stored SMF file and JPEG thumbnail identifier to host computer 60." The VideoShare Producer 20 software notifies the host computer 60 that the user wishes to place his or her video into a repository maintained by the host computer 60, which in one embodiment can be the VideoShare VideoCenter, which is a repository of all recorded and uploaded videos to date. This upload is performed automatically using a direct TCP/IP socket connection over a specific connection port of the user's computer known as port 80. . . . Both the compressed video streaming multimedia file and the thumbnail image are uploaded at substantially the same time.

This “temporarily stored SMF file” was created by converting a complete video file (*e.g.*, an AVI file) to a new format (*i.e.*, SMF) compatible with streaming video. *See* Liwerant ¶¶ 126-127 (“The file is then converted to a streaming multimedia format file as indicated by the box 635. . . . The process that is performed by the VideoShare Producer 20 software as denoted by the box 635 involves reading in the video file, frame by frame, and converting the video into a streaming multimedia format. . . . The output of this file is stored as a temporary file on the user’s hard drive, in one embodiment.”), 169 (“transferring the file to the VideoShare web site”), Fig. 6A. Thus, the video is always stored as a file and transferred to the hosting site as a file. *The video is not streamed from a recording device to a host back end to be recorded on the host back end.*

The Office Action may be confusing streaming for playback (which Liwerant discloses) with streaming for recording (which Liwerant does not disclose). Specifically, once the video file is uploaded to the server in Liwerant, the server makes it available to other users in the streaming format. *See* Liwerant ¶ 74 (“A sharing module 1580 streams the video segment in streaming format to the destination computer in response to a return of the identification tag to the receiving computer.”). At that point, the video file has necessarily already been recorded because it can be made available to another user upon request. By contrast, the claims recite streaming audio and video material from a recording device to a host back end to record the material on the host back end. Liwerant has nothing to do with streaming in that fashion.

For the reasons set forth above, the Office Action fails to demonstrate how Liwerant can stream video to record on a host back end when it discloses a completely different mechanism – saving a complete video file locally and then uploading the file. The Office Action also fails to provide any reason or rationale why one of ordinary skill in the art would be motivated to extend or alter the system in Liwerant beyond what it discloses. Accordingly, claims 1-12 and 60-105 are allowable over Liwerant.

II. Liwerant does not teach or suggest recording audio and video material on a host back end.

Independent claims 1, 64, 80, 92, 104, and 105 each recite in various forms “recording the audio and video material on the host back end.” As explained above, all recording in the Liwerant system is done on the user’s computer, not on a host back end. The user records video locally and saves it to a file on his or her hard drive, then uploads it to a hosting site. *See, e.g.*, Liwerant ¶ 77 (“The computer system 10 can operate software that can manipulate video

segment files. The computer system 10 can communicate with video sources, such as video cameras and video recording machines, if the user wishes to employ such sources.”), 82 (“The user begins by producing and/or recording a video segment on the hard disk of the computer 16 or within the temporary memory of a handheld device.”). ***The hosting site stores the video file; it does not record the video file.*** Indeed, no recording at all takes place at the hosting site in Liwerant because the video file received from the user has already been recorded. The Office Action therefore errs in finding that Liwerant discloses recording streamed audio and video material on a host back end. Claims 1-12 and 60-105 are therefore allowable over Liwerant.

III. Conclusion

Applicant respectfully urges the members of the Pre-Appeal Brief Conference to carefully consider the following questions:

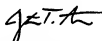
- **Where, exactly, in the cited art is there disclosure of streaming audio and video material from a recording device to a host back end so that the material can be recorded on the host back end?**
- **Where, exactly, in the cited art is there disclosure of recording streamed audio and video material on a host back end?**

Applicant respectfully submits that a fair consideration of these questions will make clear that the rejections in the Office Action cannot be sustained.

Dated: February 9, 2009

Respectfully submitted,
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